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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1969

NO. 954

JOHN A. HUTTER, JR., et al,

Petitioners

vs.

CITY OF CHICAGO,

Respondent

APPENDIX

The Illinois Supreme Court

John A. Hutter, Jr.
3526 N. Marshfield Avenue
Chicago, Illinois 60657
Counsel for Petitioners

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APPENDIX A
No. 67 CH 51317

This matter coming on to be heard on the trial of the Plaintiffs' Complaint Paragraphs 3A through 3F, the Plaintiff and Defendants giving testimony in open court and the Court being advised in the premises doth find:

1. That the rear stairwell at the premise located at 3526 No. Marshfield, in the City of Chicago, County of Cook, State of Illinois, between the 3rd and 4th floor is a common stairwell and not a private entrance to an apartment.

2. That the second means of egress at the subject premises on the 4th floor or penthouse apartments is dangerous and hazardous as it requires either for entry to another individual's apartment and/or breaking of glass to open a door or window or the climbing and descending of a ladder or ladders.

It is therefore Ordered, Adjudged and Decreed:

1. The Defendants vacate any two apartments on the fourth floor.

Raymond F. Simon
Attorney for Plaintiff
City Hall
Chicago
744-4000

May 29, 1968

ENTER: /s/ Alvin J. Kvistad
Judge 5/29/68

APPENDIX B
No. 53386

CITY OF CHICAGO, a Municipal Corporation, Plaintiff-Appellee vs. JOHN A. HUTTER, JR., CLARA N. HUTTER, his wife and MARIAN COY, Defendants-Appellants	) APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY) HONORABLE ALVIN J. KVISTAD, TRIAL JUDGE

MR. JUSTICE BURMAN DELIVERED THE OPINION OF THE COURT.

The City of Chicago brought suit in the Circuit Court of Cook County against the defendants to compel them to make certain improvements to a building owned by them so that the building would comply with certain provisions of the Municipal Code of Chicago. The case was heard by the trial court without a jury. After hearing testimony from both parties, the court ordered that the defendants vacate any two apartments on the fourth floor of their building which was found to violate Sections 67-4 and 78-15.1 of the Municipal Code. The defendants appeal from the court's order.

The building in question is located at 3526 and 3528 North Marshfield in

case at bar that would warrant the application of the doctrine of estoppel.

The public benefit resulting from the enforcement of the ordinance in the instance case clearly outweighs any detriment or loss of income suffered by the defendants. Protection from fires and the resulting casualties is the primary duty of the city. Thus, for the foregoing reasons, we are of the opinion that the Judgment Order of the Circuit Court should be affirmed.

JUDGMENT AFFIRMED.

ADESKO, P. J, AND MURPHY, J.
CONCUR.

Chicago. Originally, there were two two-story buildings on the site, one of which was of stone construction. A permit was issued in 1936 by the Building Department of the City allowing the defendants to construct and remodel the premises. Presently, a four-story multiple dwelling brick building with a basement occupies the site.

In its two-count complaint filed on December 15, 1967, the City alleged that various violations of the Municipal Code existed in the building. However, at the trial the sole issue considered by the court was whether there existed the requisite means of egress from each of the three apartments on the top (fourth) floor of the premises.

The City alleges that the defendants are in violation of Section 78-15.1 of the Municipal Code which provides that "every family unit and rooming unit shall have safe, unobstructed means of egress leading to safe and open space at ground level." The City further alleges that the defendants' building violates Section 67-4 of the Municipal Code, the applicable portion of which provides:

> There shall be not less than two exits from every building, floor, space or room, except that one exit shall be permitted under the following conditions:
>
> (e) In Multiple Dwellings, one exit door shall be permitted to a public corridor from a dwelling unit having not more than five habitable rooms and having an area not exceeding 1,000 square feet.

The City contends that the defendants are in violation of these two sections because the fourth floor apartments lack the required means of egress. Further, the other purported means of egress from the fourth floor apartments are neither safe nor unobstructed and do not lead to the ground level.

The defendants argue that they are not guilty of any violations of the Municipal Code. Alternatively, the defendants contend that their building was constructed under a permit issued in 1936 and conformed with all Code requirements at that time. The defendants question whether the public welfare demands retroactive application of the present Code in light of the fact that "the defendants would suffer unreasonable exactions as compared with the resulting public benefit if they are forced to vacate two of the penthouse units which are the most desirable and command the highest rent in the building." Lastly, the defendants claim that "a property owner should be protected and the City should be estopped from ignoring the decisions, orders, and commitments made by its building department" in the past.

In order to determine the validity of defendants' first claim, i.e., that they are not guilty of any Code violations, the record must be examined in some detail. "The transcript of the trial reveals that each of the apartments on the first, second and third floors has an entrance on a common or public corridor and that the corridor has a stairway at each end descending to the ground floor. Thus, as admitted by the City, the occupants of

the apartments on the first three floors have two effective and acceptable means of egress."

The units above the three floors are described by the defendants as penthouse units and occupy part of the roof level. These units appear to us to comprise a fourth floor. Presently there are three units rented on this fourth floor and these three shall be denominated as the front, middle, and rear apartments.

"Ingress and egress to the front apartment on the fourth floor is by means of a stairway leading from the third floor corridor to the fourth floor." The only other means of egress from the front apartment is through a break-through door to the middle apartment or by climbing a ladder to the roof.

"Ingress and egress to the middle and rear apartments is by a stairway from the third floor corridor." There is a platform at the top of this stairway at the fourth floor level. Two doors open on to the platform, one door to the rear apartment and the other to the middle apartment. The only other means of egress from the rear apartment is a door in the bedroom leading to a balcony and then a climb on a ladder leading to the roof. The middle apartment has a window through which the occupant could reach the roof. There is also a break-through door between the middle and front apartment.

The trial judge found and recited in his order the following:

1. That the rear stairwell... between the 3rd and 4th floor is

a common stairwell (for the rear and middle apartments) and not a private entrance to an apartment.

2. That the second means of egress at the subject premises on the 4th floor or penthouse apartments is dangerous and hazardous as it requires either for entry to another individual's apartment and/or breaking of glass to open a door or window or the climbing and descending of a ladder or ladders.

The evidence establishes that at least two of the three apartments (the middle and rear apartments) have but one acceptable means of egress in violation of the Municipal Code of Chicago. We are not persuaded by defendants' argument that occupants of the fourth floor apartment could exit onto the roof of the building, climb a ladder about ten feet to the roof of a contiguous building owned by the defendants, and make their way down the rear stairs of the second building to ground level. This means of egress could hardly be said to comply with the ordinances or qualify as a safe means of egress. For these reasons we are satisfied that the order of the court ruling that the fourth floor of the subject property must be converted into a single apartment with egress to the stairways both at the front and rear of the building is a proper one and is amply supported by the evidence.

In support of their second contention, that the present Code should not be applied retroactively to them, the defendants

cite Kaukas v. City of Chicago, 27 Ill. 2d 197, 188 N.E.2d 700, and City of Chicago v. Miller, 27 Ill. 2d 211, 188 N.E.2d 694. In Kaukas, the Illinois Supreme Court reversed the judgment of the Circuit Court which held invalid a section of the Municipal Code prohibiting the use of glass panel doors as a secondary means of exit. The Court stated that there are no hard and fast rules as to whether the burden upon property owners is so great compared to the public benefit that an ordinance must be held invalid. However, the Court felt that the public had a right to the safest method of protection from fire which can be found and a Municipality has the duty to provide such protection. "It is clear that a city may lawfully make building requirements applicable to buildings in existence at the time the ordinance was enacted, even though these buildings complied with the ordinance in effect at the time the new ordinance was enacted." Kaukas v. City of Chicago, 27 Ill. 2d 197, 201, 188 N.E.2d 700, 702.

In City of Chicago v. Miller, 27 Ill. 2d 211, 214, 188 N.E.2d 694, 696, the companion case to Kaukas, the Court stated that "the mere fact that the building was originally constructed under the authority of a permit issued by the city in no way estops the city from bringing an action to compel compliance with the existing code." There the defendants contended that after a lapse of more than sixty years since the original construction of the building the city should be estopped from complaining about building violations. We fail to see how these two cases help the defendants' case and we hold that there are no special circumstances in the

APPENDIX C
No. 42401
Illinois Supreme Court

There was no opinion by this court, only a printed form denying petition for leave to appeal on September 25, 1969 and like denial of motion for rehearing on November 19, 1969.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

BRIEF FOR RESPONDENT IN OPPOSITION.

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THE SUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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OPINION BELOW.

The judgment alleged by the petitioners to be reviewable by this Court is that of the Appellate Court of Illinois, First District. The Supreme Court of Illinois denied the Petition For Leave to Appeal from the decision of the Appellate Court. The opinion of the Appellate Court of Illinois is reported at 110 Ill. App. 2d 321 and at 249 N. E. 2d 184. It is also reproduced in Appendix B contained in the Appendix filed by the petitioners.

QUESTION PRESENTED.

Whether the petitioners properly preserved for review the question of deprivation of their alleged rights under the 14th Amendment of the Constitution of the United States.

REASONS FOR DENYING THE WRIT.

No substantial federal question is present and no constitutional issue was properly preserved for review.

The first time the subject of deprivation of constitutional rights under the 14th Amendment was even mentioned by the petitioners was in the Petition For Leave To Appeal to the Supreme Court of Illinois. As in the instant petition for a Writ of Certiorari, the Petition For Leave to Appeal to the Supreme Court of Illinois merely contained the unsupported statement that the petitioners were deprived of Due Process and Equal Protection under the law, without further discussion or citations to support these allegations. The Supreme Court of Illinois declined to hear the appeal from the decision of the Appellate Court and it is, therefore, the judgment of the intermediate court rather than the order of refusal which is before this Court under the provisions of 28 U. S. C. sec. 1257 (*Sullivan* v. *Texas*, 207 U. S. 416; *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157, 160).

The petitioners failed to raise the constitutional question in either the trial court (Circuit Court of Cook County, Illinois) or in the reviewing court (Appellate Court of Illinois, First District). The issues raised by the petitioners were set out in the opinion of the Appellate Court as follows (110 Ill. App. 2d 321, 323; 249 N. E. 2d 184, 185):

> "The defendants argue that they are not guilty of any violations of the Municipal Code. Alternatively,

the defendants contend that their building was constructed under a permit issued in 1936 and conformed with all Code requirements at that time. The defendants question whether the public welfare demands retroactive application of the present Code in light of the fact that 'the defendants would suffer unreasonable exactions as compared with the resulting public benefit if they are forced to vacate two of the penthouse units which are the most desirable and command the highest rent in the building'. Lastly, the defendants claim that a 'property owner should be protected and the City should be estopped from ignoring the decisions, orders, and commitments made by its building department' in the past.''

The foregoing language from the opinion of the Appellate Court details the only issues raised by the petitioners in the trial court and Appellate Court.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the Petition For a Writ of Certiorari should be denied.

Respectfully submitted,

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January 20, 1970.

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ON PETITION FOR WRIT OF CERTIORARI TO THE

ILLINOIS SUPREME COURT

- - - -

PETITIONERS REPLY BRIEF FOR RESPONDENTS IN OPPOSITION

- - - -

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